

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

3853 134

First named inventor: Michael STILGENBAUER

Application No.: 10/649,478

Art Unit: 3748

Filed: August 26, 2003

Examiner: Thai Ba Trieu

Title: TURBINE UNIT AND VTG MECHANISM THEREFOR

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity -- fee \$ 1,900 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of Response to Office Action (Amendment A) (Identify type of reply):

- ☐ has been filed previously on _____
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

- ☐ has been paid previously on _____
- ☐ is enclosed herewith.

(Page 1 of 2)

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.1A. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-8193 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

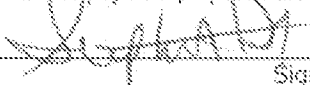
3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



 Signature

3/16/07

 Date

Stephen A. Pendorf

 Typed or printed name

32,665

 Registration Number, if applicable

Esperanto Building, 222 Lakeview Avenue, Suite 400

 Address

1-561-853-5000

 Telephone Number

West Palm Beach, Florida 33401-6163

 Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☒ Other: Change of Address

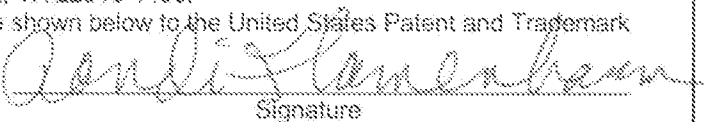
CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

3/16/07

 Date



 Signature

Randi Flamenbaum

 Typed or printed name of person signing certificate

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Michael STILGENBAUER

Confirmation No.: **5491**

Application No.: **10/649,478**

Examiner: **Thai Ba Trieu**

Filed: **August 26, 2003**

Art Unit: **3748**

Attorney Docket: **3953.134**

Customer No.: **30448**

For: **TURBINE UNIT AND VTG MECHANISM THEREFOR**

PETITION TO REVIVE PATENT UNDER 37 C.F.R. § 1.137(b)

MAIL STOP PETITION

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Applicants hereby petition under 37 C.F.R. §1.181 (a) for withdrawal of the holding of abandonment, or, in the alternative, petition to revive the application under 37 C.F.R. §1.137(b). The application is indicated as abandoned for failure to respond to the Non-Final Office Action mailed March 12, 2004.

Applicant states that the failure to respond was **UNINTENTIONAL** because the Office Action of March 12, 2004, was delivered to Assignee BorgWarner, Inc. who in turn forwarded said Non-Final Office action to the firm of Pendorf & Cutliff, Applicant's legal representative for handling.

The secretary assigned to the Associate handling this current application, namely USSN: 10/649,478, docketed the incoming office action to the extent that it was A.) reported out to the client and B.) said office action was responded to. When it was discovered that the docketed entries were erroneous it was after the expiration of the last extension date possible, namely,

September 12, 2004. We attach as Exhibit A and B copies of docket sheets noting the various entries made. Both the secretary and Associate were dismissed from the firm.

On January 4, 2006 patent attorney Stephan Pendorf left Pendorf & Cutliff and joined the firm of Akerman Senterfitt. As a result of the relocation of counsel this current application was inadvertently misplaced among the approximately 3,500 other prosecution files

Several attempts to check the status of the above-identified application was made using public PAIR and this application was unavailable on PAIR.

The undersigned counsel submits herewith Exhibit C- a Correspondence Change Request so that the U.S. Patent and Trademark Office directs all future correspondence to the address associated with Customer No. 30448. Finally, Applicants also encloses a response to the Office Action of March 12, 2004 as Exhibit D.

If the request to withdraw the holding of abandonment is denied, Applicants hereby Petition for Revival of the application under 37 C.F.R. §1.137(b). Applicants hereby declare that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 C.F.R. §1.137(b) was unintentional. Authorization is hereby granted to charge the Petition fee of \$1,500.00 to Deposit Account No. 50-0951, if deemed necessary. As the above-referenced application was filed after June 8, 1995, no Terminal Disclaimer and associated fee is believed necessary.

U.S. Application No. 10/649,478
PETITION TO REVIVE PATENT

Attorney Docket No.: 3953.134

Applicants respectfully request the decision of this petition in writing be sent to the address associated with Customer No. 30448 application as soon as possible and that the office action of March 12, 2004 be re-mailed and the holding of abandonment be withdrawn.

Respectfully submitted,

AKERMAN SENTERFITT

Date: March 16, 2007

A handwritten signature in black ink, appearing to read 'Stephan A. Pendorf', is written over a horizontal dotted line.

Stephan A. Pendorf, Reg. No. 32,665
Customer No. 30448
Post Office Box 3188
West Palm Beach, FL 33402-3188
Telephone: (561) 653-5000

U.S. Application No. 10/649,478
PETITION TO REVIVE PATENT

Attorney Docket No.: 3953.134

EXHIBIT A

08/28/03

Batch Calendar Entries Verification List
Pendorff & Outliff

Page: 1

Case: 3953.134 BorgWarner, Inc.
TURBINE UNIT AND VTG MECHANISM THEREFOR

Starting date: 08/26/2003 Plan Batch Number: 7759 Plan Name: PATFIL

Due Date	Employee	Type	Tcode	Description
09/16/2003	7 MB	To Do	000	Verify receipt of postcard
10/26/2003	7 MB	To Do	000	Verify receipt of Official Filing Receipt
11/26/2003	7 MB	To Do	000	Docket for foreign filing
02/26/2004	7 ME	To Do	000	Verify receipt of 1st Office Action
02/26/2004	7 ME	To Do	000	Docket for 1st Office Action

U.S. Application No. 10/649,478
PETITION TO REVIVE PATENT

Attorney Docket No.: 3953.134

EXHIBIT B

11/20/03

Batch Calendar Entries Verification List
Pendorf & Cutliff

Page: 1

Case: 3953.134 BorgWarner, Inc.
TURBINE UNIT AND VIG MECHANISM THEREFOR

Starting date: 11/17/2003 Plan Batch Number: 7963 Plan Name: POA2M

Due Date	Employee	Type	Tcode	Description
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11/24/2003	7 MB	To Do	000	Report Office Action to client
12/17/2003	7 MB	To Do	000	Response received from client?
12/29/2003	7 MB	To Do	000	Reminder to respond to Office Action
01/17/2004	7 MB	To Do	000	Response due to Office Action
02/17/2004	7 MB	To Do	000	Verify receipt of post card for Office Action response

U.S. Application No. 10/649,478
PETITION TO REVIVE PATENT

Attorney Docket No.: 3953.134

EXHIBIT C

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**CHANGE OF
CORRESPONDENCE ADDRESS
Application**Address to:
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	10549,475
Filing Date	August 26, 2003
First Named Inventor	Michael STILGENBAUER
Art Unit	3748
Examiner Name	Thai Ba Trieu
Attorney Docket Number	3953-134

Please change the Correspondence Address for the above-identified patent application to:

☒ The address associated with
Customer Number:

30448

OR

☐ Firm or
Individual Name

Address

City

State

Zip

Country

Telephone

Fax

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the:

☐ Applicant/Inventor☐ Assignee of record of the entire interest.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).☒ Attorney or agent of record. Registration Number 32,686☐ Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number _____

Signature

Typed or Printed
Name

Stephen A. Pandorf

Date 03/16/2007

Telephone 1-561-653-8000

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required. See below.

☐ Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to the (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 422 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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U.S. Application No. 10/649,478
PETITION TO REVIVE PATENT

Attorney Docket No.: 3953.134

EXHIBIT D